IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

CRP.No. 1883 of 1996(G)

AA.33/1990 of APPELLATE AUTHORITY (LR),ATTINGAL
OA.3/1987 of LAND TRIBUNAL, NEYYATTINKARA

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REVN. PETITIONER/RESPONDENT/RESPONDENT:

MOHAMMED KANNU ABDUL RASHEED,
THOPPUVILAKOM PUTHEN BUNGLOW,
MANACAUD, MUTTATHARA VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.G.UNNIKRISHNON
SRI.G.UNNIIKRISHNON

RESPONDENTS/APPELLANT/APPLICANT AND ANOTHER:

1. V.ASANARUKANNU, PARAYAMVILAKOM,
VIZHINJAM, NEYYATTINKARA.

2. GOVERNMENT OF KERALA, REPRRESENTED BY
THE CHIEF SECRETARY TO GOVT., GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

R1 BYADV.SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.PIRAPPANCODE V.S.SUDHIR
R2 BY GOVERNMENT PLEADER SRI THOMAS JOHN AMBOOKEN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP.NO.3177/1996 IN CRP.NO.1883/1996

Dismissed

17/7/2007 Sd/- P.R.RAMAN, JUDGE.

True Copy

P.A. to Judge

P.R.RAMAN J.

C.R.P.No.1883 OF 1996

Dated this the 17th day of July, 2007

O R D E R

Petitioner is the respondent in O.A.No.458/72. The lst respondent herein filed an application in the prescribed form under Rule 78(1) of the Kerala Land Reforms Rules for purchase of the kudikidappu right as successor in interest of his predecessor. The owner of the lands where the kudikidappu is stated to have been situated is shown as Mohammed Kannu Abdul Rasheed, Trivandrum. The name of the person who is in possessions of the land is shown to be Usanaru Pillai Asanaru Kannu, Parayamvilakam Veedu, Kottukal, Vizhinjam Desom. That application was allowed and an extent of 10 cents was allowed by way of kudikidappu. That was Challenged by the land owner (petitioner herein) before the Appellate Authority as A.A.No.985/74. The Appellate Authority allowed the appeal and remanded the case to the Land Tribunal. In the remand order passed by the Appellate Authority, it is specifically noticed that the petitioner herein had originally taken the stand that there is no building in his property. Subsequently, he contended that 1 1/2 cents of land was leased out to one Meera Sahib in the year 1117 and that the respondent's father-in-law put up

the building with the permission of the lessee and therefore the kudikidappu if at all cannot extend beyond the 1 1/2 cents involved in the case. It was found that the lease was only for 1 1/2 cents. But it further held that there is no evidence that the building is situated within that 1 1/2 cents. There is a further finding of the Land Tribunal that the respondent's father-in-law was occupying this building even prior to the lease of 1117. That is how 10 cents was allowed by the Land Tribunal. After analysing the contentions between the parties, the Appellate Authority found that if the building was put up with the permission of the lessee, then the kudikidappu has to be restricted to the extent covered by the lease alone. On the other hand, if the building was put up with the permission of the land owner (the appellant) then the larger extent legitimately due will be allowed to be purchased. Pursuant to the remand order, the case was re-numbered as O.A.No.3/87. The Land Tribunal by order dated 6th April, 1988 held that the building is situated in the area subject to the lease deed and from the age of the building it has been constructed after 1117 and as such the building was put up with the permission of the lessee. Hence, the kudikidappu was restricted to the extent covered by the lease, namely, 1 1/2 cents. The respondent herein filed an appeal as A.A.No.33/1990. The Appellate Authority as per order dated 21st October, 1993 placing reliance on Explanation IIA and its proviso held that the respondent is statutorily deemed to be a kudikidappukaran as one permitted to occupy

homestead thereon as envisaged in sub clause (a) and (b) of Section 2(25) and being a Panchayat area he was allowed to purchase an extent of 10 cents. But there is a clear finding in paragraph 11 of the order that the Advocate Commissioner has reported that the applicant is having in possession of 6.131 cents of land including the dwelling house. Despite the fact that the applicant was occupying only 6.131 cents of land going by the Commission report, the Appellate Authority allowed the appeal enabling the respondent to purchase 10 cents of land under sub section 3 of Section 80A of the Kerala Land Reforms Act. Aggrieved thereby this revision is filed.

2. After the first remand order passed by the Appellate Authority, the Revenue Inspector visited the property and submitted a report against which no objection was filed by either side. The Revenue Inspector in his report dated 4/3/1987 reported that the applicant in the O.A. has no relationship with Meera Sahib, the original lessee and the applicant's father-in-law is one Ahammed Kannu. Therefore, marupattom executed by Meera Sahib has nothing to do with the applicant in the O.A. On the other hand, the applicant and its predecessor were continued to be residing in the dwelling house for over 40 years, going by the estimated age of the house and he is in occupation of an extent of 7 cents. The contention of the revision petitioner is that since Meera Sahib has granted a lease of 1 1/2 cents, the maximum extent of purchase could be allowed is only 1 1/2

cents. But it has been found on evidence by the Authorities below that Meera Sahib is not in any way related to the applicant. At any rate, the present dwelling house in which the applicant is residing is 40 years old. As per Explanation II A of Section 2(25), which was introduced by Act 17 of 1972, notwithstanding any judgment, decree or order of any Court, a person, who, on the 16th day of August 1968, was in occupation of any land and the dwelling house thereon (whether constructed by him or by any of his predecessors-in-interest or belonging to any other person) and continued to be in such occupation till the lst day of January, 1970, shall be deemed to be a kudikidappukaran. Therefore, on the facts of this case the respondent satisfies Explanation II A newly introduced by Act 17 of 1972 and therefore, he will be deemed to be a Kudikidappukaran. The only other question now remains to be considered is what is the extent of land he could purchase of kudikidappu. Section 80A (3) confers right on the kudikidappukaran to purchase 3 cents in city or major municipality or five cents in any other municipality or ten cents in a panchayat area. That is the maximum extent which a person is entitled to purchase. There is a proviso to sub section 3 of Section 80A as per which where the land available for purchase in which the kudikidappu is situate or the land in which the kudikidappu is situate, is less than the extent specified in this sub section, the kudikidappukaran shall be entitled to purchase only the land available for purchase, or as the case may be, the land in which the

kudikidappu is situate. In other words, if the extent of kudikidappu is less than the maximum extent as prescribed, then the kudikidappukaran will be entitled to purchase only the extent of land occupied and there is no obligation for the land owner to give more extent than what is held by him merely because the land occupied by the kudikidappu is less than the maximum prescribed. In this case the court below has accepted the Commissioner's report wherein an extent held by the respondent along with the dwelling house is 6.131 cents and therefore, the extent of the land that could be purchased by way of kudikidappu including the dwelling house cannot exceed 6.131 cents. The Appellate Authority therefore committed an error in allowing 10 cents by way of kudikidappu, even after accepting the Commissioner's report. Even though the Revenue Inspector's report would show an extent of 7 cents, the Appellate Authority has only accepted the Commissioner's report because the Commissioner was specifically appointed to visit the property and to report about various points as per which the Commissioner, after measurement, has reported the extent of land in occupation of the respondent herein and submitted a plan. If that be so, the order passed by the Appellate Authority allowing purchase of 10 cents over 6.131 cents actually held by the respondent is wrong and the same is set aside. It is declared that the respondent will be entitled to purchase an extent of 6.131 cents including the dwelling house. The Land Tribunal shall demarcate

the extent of 6.131 cents including the dwelling house and issue purchase certificate in accordance with the rules.

C.R.P. is allowed in part. Parties shall bear their respective costs.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

C.R.P.NO.1883 OF 1996

O R D E R

17th July, 2007